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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,275

04/13/2004

Magnus Svensson

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09/01/2009

WARREN A. SKLAR (SOER)

RENNER, OTTO, BOISSELLE & SKLAR, LLP

1621 EUCLID AVENUE

19TH FLOOR

CLEVELAND, OH 44115

EXAMINER

BELANI, KISHIN G

ART UNIT

PAPER NUMBER

2443

MAIL DATE

DELIVERY MODE

09/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/823,275	Applicant(s) SVENSSON ET AL.	
	Examiner KISHIN G. BELANI	Art Unit 2443	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/K. G. B./
 Examiner, Art Unit 2443

/George C Neurauter, Jr./
 Primary Examiner, Art Unit 2443

Continuation of 11. does NOT place the application in condition for allowance because: The examiner considers that the cited prior art adequately disclose all the claim elements of each claim. The examiner's response to the applicants' arguments is as follows: The applicants' allege that the cited reference of Agraharam et al. (US Patent 6,035,339) does not provide peer-to-peer content capability determination, but does so through a centralized server. The examiner would like to point out that neither of the independent claims 1 and 14 disclose "peer-to-peer" feature. Therefore, the allegation is without any merit. As for as the centralized server is concerned, no such server is either mentioned in the cited paragraphs or shown in Fig.1. On the other hand, Fig. 1 clearly shows information delivery device 110 to be a mirror-image of the end-user terminal 114 that originates the request for content delivery from device 110. Therefore, there is no basis to call device 110 a centralized server, as the applicants have tried to portray it.

On page 3 of the "REMARKS", the applicants further object to the examiner's stated position in the Final Office Action, that "any client terminal connected to a network may be considered as a network terminal", by arguing that "A client is not simply any device in the network, but a user-end device (as contrasted with a server with which the client communicates)". The examiner does not understand what the applicants are objecting to, since the examiner used the phrase "any client terminal". How can a client terminal not be a user-end device, and when does it become a server?

On page 3, the applicants further argue that the examiner again asserts the network information delivery device 110 to be a "sending end client that originates the message". The examiner respectfully disagrees with this argument, as the examiner made no such assertion. The message is originated by the end-user terminal 114 (see page 3, lines 4-6 of the office action dated July 24, 2009), and the content is delivered by the information delivery device 110. The applicants further allege that because the device 110 retrieves requested information from an information source 108, the transmitted content does not originate from within network device 110 as claimed. The examiner again disagrees with this argument. Claim 1 does not disclose that the content originate from within the sending client terminal. Accordingly, the system of Agraharam does indeed anticipate independent claim 1, and the combination of Agraharam and Nielson et al. does render independent claim 14 obvious and non-novel. The rejections of claims 1 and 14 is therefore maintained.

Claim 1 is also rejected under 35 USC 102(e) as being anticipated by Lysenco et al. (US Patent Publication 7,089,319). The applicants argue, without providing any basis, that in Lysenco, the content provider performs the claimed step of "evaluating the multimedia-messaging-content-capability information by the sending end client in order to determine what content to transmit to the receiving end client". The examiner has cited column 10, lines 55-65 in Lysenco, which clearly state that the created copy of the delivery-on-demand client is optimized for use with the identified web browsing application, such that it is instantly compatible with every known type of generic web browsing application, thereby needing no further evaluation of the content and no customization. Additional argument that system of Lysenco is not a messaging system as claimed, is also without merit. The claimed system is about multimedia-messaging-content-capability negotiation, which, in the broad interpretation of the teaching, the Lysenco system is as well.